

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. S-2842**

**PETITION OF SOMESWARA BEKKAM**

OPINION OF THE BOARD  
(Opinion Adopted May 15, 2013)  
(Effective Date of Opinion: May 17, 2013)

Case No. S-2842 is an application for a special exception, under Section 59-G-2.00 of the Zoning Ordinance, to allow a special exception for an accessory apartment. The subject property is Lot 34, Block 3, Calverton Subdivision, located at 12508 O'Fallon Street, Silver Spring, Maryland 20904, in the R-90 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on October 18, 2012, closed the record in the case on December 10, 2012, and on January 9, 2013, issued a Report and Recommendation for approval of the special exception, subject to conditions. The Board of Appeals considered the Report and Recommendation at its Worksession on January 23, 2013. The Board remanded the case to the Hearing Examiner on February 7, 2013, for additional information about the existence of an easement adjacent to the subject property and whether such an easement would prevent construction of a fence on the side of the property adjoining Lot 33, Block 3.

In an order dated February 15, 2013, the Hearing Examiner remanded the case to the Technical Staff of the Maryland National Capital Park and Planning Commission (MNCPPC) to investigate whether a fence would be prohibited and to show acceptable alignments for a fence. The Technical Staff issued a Report [Exhibit 23], dated April 23, 2013, showing three possible locations for a fence. The hearing on remand proceeded on April 23, 2013, and on May 2, 2013, the Hearing Examiner issued a Remand Report and Recommendation that if the Board recommends approval of the special exception, it impose the following condition:

"The Petitioner shall install a fence that meeting the alignment shown in "Alternative 3" of the Staff Report (Exhibit 23). The fence shall be no greater than four feet in height and must not contain a gate or provide any other access through the fence."

Decision of the Board:      Special Exception **Granted** Subject to Conditions

The Board of Appeals considered the Remand Report dated May 2, 2013 together with the Hearing Examiner's Report and Recommendation dated January 9, 2013, at its Worksession on May 15, 2013. After careful consideration and review of the record in the case, the Board amends the condition proposed in the Remand Report to substitute the word 'meets' for the word 'meeting', adopting that condition as Condition 10, adopts the Hearing Examiner's Report and Recommendation dated January 9, 2013 and the Remand Report dated May 2, 2013 and grants the special exception subject to the following conditions:

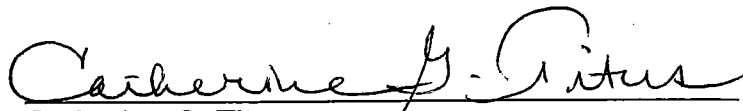
1. The Petitioner is bound by his testimony, representations and exhibits of record to the extent that such testimony and evidence are identified in the Hearing Examiner's Reports of January 9, 2013, May 2, 2013 and in this Opinion;
2. The Petitioner must comply with all of the conditions (with the exception of Item 14) set forth in the Memorandum of Cynthia Lundy, Housing Code Inspector, Division of Housing and Code Enforcement dated October 26, 2012 (Exhibit 20):
  1. Entrance to the apartment is in the rear of the house
  2. Entrance lock is broken—(stem to knob presents a hazard)
  3. Must repair/replace the kitchen light/electrical fixture—(ceiling)
  4. Must install stove—(contact Department of Permitting Services-240-777-0311)
  5. Must install missing drawer(s) for kitchen cabinet
  6. Must install doors to furnace area—(doors should be louvered or have vents to insure proper ventilation)
  7. Must provide labels for circuit breakers
  8. Repair hole(s)—ceiling—1/2 bathroom)
  9. Repair the sliding door handle
  10. Must install a wall(s) that completely separates the living room (labeled "furnace room" on Exhibit 6) from the stairway that leads to the main level of the residence and also, the adjacent hallway of the unit.
  11. Must remove, from outside, all indoor furniture, carpet, etc.

12. Must remove all solid waste in the front, side and rear of property, to include but not limited to, old vacuum, plastic bags, refrigerator, poles, trash and rubbish
  13. Eliminate the ground erosion
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3. Occupancy must be limited to a family of four or two unrelated individuals and Petitioner must comply with any other directions of the Housing Code Inspectors to ensure safe and code-compliant occupancy;
  4. Occupants of the accessory apartment shall not use the area marked "furnace room" and half bath accessed from the furnace room;
  5. Occupants of the accessory apartment may have no more than two cars housed in the neighborhood;
  6. Vehicles parked in the driveway must not block the sidewalk;
  7. Petitioner must not park any vehicles used in his work at the premises or on the street within the neighborhood;
  8. Petitioner shall have any new tenants of the accessory apartment sign a lease agreement that (1) prohibits them from having more than two vehicles housed in the neighborhood, (2) prohibits them from parking in the driveway so as to block the sidewalk, and (3) mandating that they use only the walkway shown on the site plan (Exhibit 4) to access the accessory apartment.
  9. Occupants of the apartment must use only the walkway shown on the site plan (Exhibit 4) to access the accessory apartment;
  10. The Petitioner shall install a fence that meets the alignment shown in "Alternative 3" of the Staff Report (Exhibit 23). The fence shall be no greater than four feet in height and must not contain a gate or provide any other access through the fence."
  11. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
  12. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
  13. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes

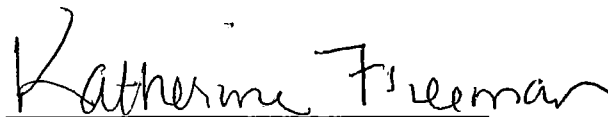
(including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Catherine G. Titus, Chair, seconded by Stanley B. Boyd, with Carolyn J. Shawaker and John H. Pentcost in agreement, and David K. Perdue, Vice-Chair, necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 17<sup>th</sup> day of May, 2013.

  
Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for

Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

